

REMARKS

Rejection Under 35 U.S.C. § 103

The Examiner has rejected claims 1-50 under 35 U.S.C. 103 as being unpatentable over an internet publication entitled, "Diesel Engine Basics" by Ian McQueen (the "McQueen reference"), for the reasons provided at pages 2 to 4 of the Office Action. Applicants respectfully traverse this rejection on the grounds that the McQueen reference has not been established as prior art.

In order to establish a reference as prior art, the Examiner has the burden of determining whether a reference is prior art under 35 USC 102 by comparing the effective filing date of the application with the date of the reference. See MPEP 706.02(a). According to the MPEP, "The examiner must determine the issue or publication date of the reference so that a proper comparison between the application and the reference dates can be made." MPEP 706.02(a)(i).

Applicants have examined the McQueen reference as it exists at www.antiquemodeier.org/diesels.htm, and can find no evidence of a publication date. Further, the examiner has not addressed the issue of whether the McQueen reference qualifies as prior art in the outstanding Office Action. In the Notice of References Cited (PTO-892) the examiner did cite the reference as having a date of 1948. However, the only date applicants can find in the McQueen article is a teaching that the Elfin 2.40 diesel engine was made from 1947 to 1958. This teaching does not provide support for establishing either the date of the McQueen article, or any date associated with the diesel fuel formulations disclosed therein.

Because the Examiner has failed to establish the McQueen reference as potential prior art under 35 USC 102, the reference cannot be used as prior art to establish a rejection under 35 U.S.C. 103. Accordingly, applicants assert that no *prima facie* case of anticipation has been established. Therefore, applicants respectfully request that the Examiner either provide evidence of the publication date of the McQueen article, or withdraw the rejection.

CONCLUSION

In view of the foregoing remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 50-2961.

Respectfully submitted,

Dated: January 22, 2007

By: 
Matthew L. Whipple
Reg. No. 47,217